

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8787 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

ASHOK @ ASALO # HASLO DHARSINHTHAKOR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MS.SIDDHI TALATI, AGP.for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India two writs in the nature of certiorari and habeas corpus have been applied for quashing detention order dated 18.6.1998 passed by the Commissioner of Police, Ahmedabad City under section 3(2) of the Prevention of Antisocial Activities Act (for short 'PASA') against the petitioner and in the nature of

habeas corpus for immediate release of the petitioner from illegal detention.

The brief facts are that the Detaining Authority aforesaid considered four registered cases under Bombay Prohibition Act against the petitioner and further considered two statements of confidential witnesses and from the aforesaid material he was satisfied that in the first instance the petitioner was bootlegger and in the second place the petitioner's activities were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed. This order has been challenged in this writ petition.

At the time of hearing of this petition learned Assistant Government Pleader wanted time to file counter affidavit. However, learned Counsel for the petitioner stated that he will argue and press only one point viz. the activities cannot be considered prejudicial for maintenance of public order and does not press any other point in the writ petition. The learned Assistant Government Pleader agreed to argue the writ petition. As such on the point of representation raised in the writ petition no finding is required.

The only point for consideration in this petition is whether the activities of the petitioner were prejudicial for maintenance of public order.

The subjective satisfaction of the Detaining Authority that the petitioner is bootlegger is based upon material on record viz. registration of four cases against the petitioner under Bombay Prohibition Act in which different quantities of country made liquor was recovered from him and also from the statements of two witnesses that the activities were in connection with the bootlegging activities of the petitioner. However, on the point of activities being prejudicial for maintenance of public order, the subjective satisfaction of the Detaining Authority does not seem justified from the material on record. From the four registered cases under Bombay Prohibition Act, it cannot be said or inferred that the petitioner at the time of raid, search and seizure created any situation which was prejudicial for maintenance of public order or he misbehaved with the raiding party or he offered resistance in search and seizure. For bootlegging activities and for being in

possession of illicit country made liquor he was booked under Bombay Prohibition Act. It was simply law and order problem which was effectively tackled in as much as the petitioner was booked under relevant sections of the Bombay Prohibition Act.

It is now to be seen whether the two incidents narrated by the two witnesses created situation prejudicial for maintenance of public order.

The first incident took place on 7.6.1998 at 9.00 a.m. When the petitioner and his associates came to the witness and asked him to store the stock of liquor at his business place. The witness refused whereupon the petitioner got excited, caught hold and dragged the witness on road and had beaten. The witness was also threatened on point of knife. People gathered there whereupon petitioner got excited and rushed towards them with open knife. Atmosphere of fear was created. Daily routine was disturbed. On the face value of this statement it can hardly be said that the incident was of such order or nature that it had potentiality of disturbing even tempo of life of the locality or community or it had disturbed public peace and tranquillity in the area. When such incident occurs atmosphere of fear is likely to be created, but mere allegation of such atmosphere does not amount to creation of situation prejudicial for maintenance of public order.

The second incident took place on 8.6.1998 at 8.00 p.m. when the petitioner was storing liquor near the mosque. The witness objected whereupon the petitioner threatened the witness pointing out "astra". People gathered there. They were also followed by the petitioner having "astra" in his hand. Again according to the witness atmosphere of fear was created. It is not stated that any person was injured or that the witness was even beaten either by the petitioner or by some one else. Consequently, this incident also cannot be said to have disturbed even tempo of the life of the locality or community. On the face value such incident could have created law and order problem. No other incident has been cited. These two isolated incidents on two different dates though in succession cannot be said to have created situation prejudicial for maintenance of public order. As such the detention order has been rendered invalid and illegal. The writ petition therefore succeeds and is hereby allowed. The impugned

order of detention dated 18.6.1998 is hereby quashed.
The petitioner shall be released from custody forthwith
unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt